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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/545,267

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Jeffrey A. Frisco

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12/16/2003

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EXAMINER

HOYE, MICHAEL W

ART UNIT

PAPER NUMBER

2614

DATE MAILED: 12/16/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/545,267

Applicant(s)

FRISCO ET AL.

Examiner

Michael W. Hoye

Art Unit

2614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 32-33, 35-36, 38-42 and 45-47 reflecting the amendment entry of amended independent Claims 32 & 41.

Claim(s) withdrawn from consideration: _____

8. ☒ The drawing correction filed on 26 June 2003 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Applicants' arguments filed on 10/14/03 have been fully considered but they are not persuasive.

Regarding independent claims 32 and 41, the Applicants submit that, "there is no proper motivation to selectively modify the primary reference in the manner set forth by the Examiner in an attempt to arrive at the claimed invention as recited in amended independent claims 32 and 41...", and more specifically, "one of ordinary skill in the art would not look to modify the Sklar et al. patent to include a moving map image generator for generating a flight information channel including a moving representation of the aircraft position on the map image, or that the moving map generator comprises a processor for determining an aircraft position during flight, and at least one of an aircraft direction, aircraft speed, and aircraft altitude for display with the moving map image, without having had the benefit of studying the Applicants' specification."

Moreover, the Applicants argue that, "a skilled artisan would not look to combine an in-flight entertainment system for receiving satellite broadcast signals, with a data storage system for storing data on a network on an aircraft. Instead, the Examiner appears to be using improper hindsight reconstruction based upon the teachings of Applicants' specification to assemble the disjoint pieces of the prior art..."

In response, the Examiner respectfully disagrees with the applicants because the Examiner is not looking to modify the satellite network of Sklar et al with the data network of Galipeau et al, but rather modify the in-flight entertainment (IFE) system of Sklar et al (which includes a headend area 52, a signal distribution network 54, and a plurality of peripherals 56, that may provide a variety of on demand entertainment services to the passengers, including video, audio, and/or data related sources or services which are incorporated with the headend 52, see col. 7, line 57 - col. 8, line 16), with the concept, as taught by Galipeau et al, of using the video input of a map of the flight route with the aircraft superimposed over its present position, etc., as data on demand (see col. 11, lines 25-38 of Galipeau et al). The additional video programming information that may be provided on demand to the passengers, including a map of the flight route with the aircraft superimposed over its present position, as taught by Galipeau et al (col. 11, lines 25-38), would be beneficial to the system of Sklar et al, since it would further enhance the satellite TV receiver IFE system to further include a moving map image generator flight information channel or service along with the satellite TV and other channels or on demand services already included in the IFE system, which would bring additional satisfaction and enjoyment to the passengers who desire to know additional information about the aircraft flight. In addition, the Galipeau et al reference further discloses (as previously rejected in dependent claims 34 and 43, now amended to independent claims 32 and 41 respectively) that the moving map image generator further includes the claimed moving map image generator comprises a processor for determining an aircraft position during flight as shown by airplane systems 198 and network controller 186 in Fig. 12, which inherently comprises a processor for determining position as included with the airplane systems 198 in the figure (col. 11, lines 25-38). Moreover, the Galipeau et al reference discloses (as previously rejected in dependent claims 37 and 44, now amended to independent claims 32 and 41 respectively) that the claimed at least one of aircraft direction, aircraft speed, and aircraft altitude for display with the moving map image, as shown by the heading, airspeed, and altitude within the airplane systems 198 of Fig. 12 for use with the map image.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971)..



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